

STATE OF MICHIGAN
COURT OF APPEALS

In re COBURN, Minors.

UNPUBLISHED

May 21, 2020

Nos. 351379; 351380
Jackson Circuit Court
Family Division
LC No. 15-000539-NA

Before: SWARTZLE, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In Docket No. 351379, respondent-father appeals as of right the trial court order terminating his parental rights to his minor children, HC and RC, under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). In Docket No. 351380, respondent-mother appeals as of right the trial court order terminating her parental rights to HC and RC under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). Because there are no errors warranting reversal, we affirm.

I. BASIC FACTS

In the early morning hours of July 26, 2018, RC was found walking alone in a park. He was wearing a diaper and was reportedly filthy, as if he had not been cleaned in a few days. The police picked him up, but did not receive any phone calls for a missing child. Eventually, a Child Protective Services (CPS) worker recognized RC and he was taken to respondent-father’s home. Two hours had elapsed since the initial call reporting a toddler alone in the park. Respondent-father was unaware that RC was outside the home. In addition, his home was filthy and was not in a condition safe for children. Respondent-father admitted to the police that RC knew how to open doors and had run out of the home 6 or 7 times before the current incident. Respondent-father blamed the condition of the home on his physical health as well as being “overwhelmed.” Because of the improper supervision and the home’s unsafe condition, the police took RC into protective custody.

Thereafter, the Department of Health and Human Service (DHHS) filed a petition seeking removal of respondents' children, HC, RC, JG, and LG,¹ from respondent-father's home. In addition to allegations pertaining to respondent-father's unsafe and inappropriate home and his improper supervision, the petition alleged that respondent-mother, who lived outside the home, had ongoing issues with substance abuse. It also alleged that both respondents had issues with domestic violence, parenting skills, and emotional stability and behavior. Respondents eventually pleaded no-contest to the allegations in the petition, and a report prepared by the DHHS was used as the factual basis for the plea.

The DHHS provided respondents with reunification services for more than 182 days, including therapy sessions, to aid in rectifying the conditions that brought the children into care. Despite the services, respondent-mother continued to struggle with substance abuse and parenting skills. In addition, respondent-father continuously demonstrated a problem with anger management, that would flare at times, and he was unable to maintain satisfactory housing. Accordingly, following a termination hearing, the trial court terminated respondents' parental rights to the children after finding statutory grounds to terminate under MCL 712A.19b(3)(c)(i), (g), and (j) and that termination of respondents' parental rights was in the children's best interests.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondents argue that the trial court erred by finding by clear and convincing evidence that there were statutory grounds to terminate their parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). "We review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted).

B. ANALYSIS

Respondents' parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j). Termination under MCL 712A.19b(3)(c)(i) is proper if there is clear and convincing evidence that:

¹ LG and JG were placed in relative care, and a subsidized juvenile guardianship was ordered for them. Only the termination of parental rights to RC and HC are at issue in this appeal.

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

At the outset, it is undisputed that more than 182 days elapsed between the entry of the initial dispositional order in September 2018 and termination of respondents' parental rights in October 2019.

With regard to respondent-father, the barriers leading to adjudication included domestic violence, unsafe home conditions, improper supervision of the children, and emotional issues.² Despite being provided with services, respondent-father did not rectify the unsafe house conditions. A caseworker testified that on May 28, 2019, she attempted a home visit. Initially, respondent-father would not allow the caseworker to enter the house, but he relented after multiple requests for entry. The caseworker testified that the home was "extremely cluttered, inappropriate, and dangerous for children." She added that the house was "filthy" and there was "a lot of dangerous equipment, mechanical type things in the home, stacks, and piles of storage—storage boxes and things." Respondent-father was advised that he needed to clean the home. On June 27, 2019, however, when the caseworker returned to the home, respondent-father refused to allow entry into the home, stating that it "was not ready yet." The caseworker testified that she returned to the home a couple of weeks later, but no one answered the door. She called respondent-father, but he did not answer. Thereafter, twice in October 2019, she attempted to go to the home, but no one was there. Although she texted respondent-father, he did not respond. Overall, the caseworker testified that she had not been able to evaluate the home since May 2019.

In its findings regarding termination under MCR 712A.19b(3)(c)(i), the court found that the most recent occasion in which respondent-father had allowed someone to view his home, it was deemed "unsuitable" for the children. The court noted that "despite numerous attempts to try to get in to re-inspect the home, [father] was not compliant, [and] did not make his home available for inspection." The court found that the home continued to be in a condition that was not suitable for the children. Given the caseworker's testimony, the court's factual findings are not clearly erroneous.

Regarding respondent-father's parenting skills, domestic violence, and emotional stability and behavior, the trial court relied on the testimony of Dr. Shannon Lowder, who conducted

² On appeal, respondent-father suggests that the only issues were housing and improper supervision. However, respondent-father pleaded no contest to the allegations in the petition, and the document indicating the factual basis for the plea indicated that respondent-father was unable to maintain the home in a satisfactory condition because he was "overwhelmed." Further, the report also recounted a history of domestic violence between respondent-mother and respondent-father. As a result, the conditions leading to adjudication clearly included more than just improper supervision and unsafe home conditions.

respondent-father's psychological evaluation. Dr. Lowder testified that respondent-father's parenting test—which is used to determine “if parents are being forthright and honest about their assessment of parenting”—was invalid. She explained that invalid test results can indicate a parent who is unable to admit to parenting frustrations and concerns. Dr. Lowder had concerns regarding respondent-father's ability to parent. She noted that respondent-father refused to take any responsibility for his role in the children's removal from his care, and she identified concerns stemming from his volatile relationship with respondent-mother and his inconsistency regarding his desire to continue a relationship with respondent-mother. On the basis of respondent-father's failure to take responsibility, Dr. Lowder diagnosed him with mild neurocognitive disorder due to a traumatic brain injury (TBI) with behavioral disturbance. Dr. Lowder explained that this meant that, since respondent-father's TBI, he was having behavioral changes and was acting out. She added that the accident had caused respondent-father's previous aggression or violence to become “exacerbated.” Dr. Lowder noted that respondent-father had explosive responses to things. Overall, Dr. Lowder opined that on the basis of everything discovered and her evaluation of father, she could not recommend that he be a custodial parent for the children because of safety concerns of an accident.

The trial court credited Dr. Lowder's testimony and psychological evaluation, noting that during the interview portion of the evaluation respondent-father “did not acknowledge his own domestic violence contrary to what he plead to, [but] he did acknowledge that his children had been subjected to numerous occasions of domestic violence inflicted upon [respondent-mother] when the children were present.” The court stated that Dr. Lowder expressed concern about respondent-father's “mental health and ability to provide care for his children.” And although respondent-father's anger and acting out were tied to his TBI, the court held that its focus was “not on the cause for the anger and acting out in violent ways,” but rather “on the behavior itself. It's the behavior that impacts the children.” Additionally, the trial court stated that father was “unwilling or unable to admit to even normal parenting frustrations and concerns.” The court said that respondent-father failed to take responsibility for anything related to the removal of the children. Based on the evidence presented, we discern no clear error in the court's findings in this regard.

Furthermore, the trial court discussed that there was “acknowledgment by several witnesses concerning instances of explosive behavior” by respondent-father. The court stated that respondent-father had missed a “significant” amount of parenting time, and during his visits, he did not engage or play with the children; he let the older children parent RC and HC. The court noted that although the caseworker gave testimony that respondent-father did have a bond with the children, she was “definitely hesitan[t]” to do so.

In concluding that respondent-father failed to rectify his barriers to reunification, the trial court stated that although respondent-father had made some progress, there was “not enough time . . . that would be reasonable in light of these children's ages” to see if his housing problems, anger management, and explosiveness issues were permanently resolved. The court's findings are again supported by the record. Multiple witnesses testified to respondent-father's anger-management issues, and there was testimony that it would take over a year to rectify the conditions.

Although respondent-father argues on appeal that the alleged anger issues were stated in conclusory fashion and that the court improperly focused on the negative testimony without crediting the positive testimony, such arguments were presented to the trial court and are not a basis for reversal. The fact that the court, despite being aware of those challenges, nevertheless chose to credit the so-called negative testimony, goes to the court's evaluation of the weight of the evidence and the credibility of the witnesses. It is not the place of an appellate court to interfere with a trial court's credibility determinations.

In light of all the evidence presented, we conclude that the trial court did not clearly err by finding statutory grounds to terminate respondent-father's parental rights under MCL 712A.19b(3)(c)(i).

With regard to respondent-mother, her substance abuse was a major barrier to reunification. Respondent-mother was provided with numerous services to address her substance-abuse. However, she continued to test positive for illicit substances. According to Dr. Lowder, who performed a psychological evaluation of respondent-mother, respondent-mother's substance-abuse issues were long standing. One of the children tested positive for substances at birth, and since then respondent-mother's substance abuse issues had been ongoing. For example, respondent was receiving substance-abuse treatment at Hope House, but a caseworker testified that since respondent-mother was discharged from Hope House, she had five positive drug screens for methamphetamine, the most recent of which were in June and July of 2019. As a result of the positive drug screens, respondent-mother violated her probation and was incarcerated. Respondent-mother was transferred to the Odyssey House treatment facility, where she had had "four or five" negative drug screens, but the record reflects that it was anticipated that it was more than a year before it could be determined if she would be successful. Because of respondent-mother's lack of sobriety, the caseworker testified that respondent was unable to participate in recommended trauma-focused therapy.

In sum, although there was some evidence that respondent-mother was making progress toward eliminating the barriers to reunification, it is clear that her substance-abuse issues were ongoing and that there was no reasonable likelihood that they would be rectified within a reasonable time considering the ages of the children. Therefore, the trial court did not clearly err by finding clear and convincing evidence supported terminating respondent-mother's parental rights under MCL 712A.19b(3)(c)(i).³

III. BEST INTERESTS

A. STANDARD OF REVIEW

³ Only one ground for termination need be established. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Because we conclude that the trial court did not clearly err by finding that termination of respondents' parental rights was warranted under MCL 712A.19b(3)(c)(i), we decline to address whether there was clear and convincing evidence to support termination under MCL 712A.19b(3)(g) and (j).

Respondents argue that the trial court erred by finding termination of their parental rights was in their children's best interests. The trial court's findings regarding a child's best interests are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

B. ANALYSIS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted). "[T]he focus at the best-interest stage" is on the child, not the parent. *In re Moss*, 301 Mich App at 87. In balancing all the evidence available to determine the child's best interests, the court may look to "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider the length of time the child was in foster care, the likelihood that "the child could be returned to her parent's home within the foreseeable future, if at all," and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

As for respondent-father, we discern no error in the court's best-interests decision. The record reflects that his home remained unfit for the children. Respondent outright refused to allow the caseworker to examine the home and did not respond to text messages and phone calls relating to a home visit. Further, respondent-father's anger issues were not rectified and he continued to have outbursts. Respondent-father refused to take responsibility for the conditions leading to the children being removed from the home. Although there was testimony regarding a bond between respondent-father and the children, the court focused on the children's need for permanency and stability. It considered that the children were doing well in foster care and were bonded with their foster parents, who were willing to adopt. The court stated that there was testimony that the children had a bond with respondent-father; however, it noted that while that testimony was given, there was "definitely hesitancy." There was also testimony that respondent-father missed a significant amount of parenting time, and during his visits, he did not engage or play with the children; he let the older children parent RC and HC. Accordingly, based on the foregoing, we conclude that the trial court did not clearly err by finding that it was in the best interests of RC and HC to terminate respondent-father's parental rights.

With regard to respondent-mother, the trial court similarly focused on the children's need for permanency and stability, respondent-mother's parenting ability, the advantages of a foster home, the possibility of adoption, as well as the likelihood that the children could be returned to respondent-mother's home within the foreseeable future. In addressing the children's need for permanency and stability, the trial court stated that although respondent-mother was now housed at the Odyssey House and was "on the right track," she had not shown that she had benefited from previous substance abuse services. Respondent-mother had become incarcerated because of a relapse that occurred after her discharge from the Hope House. The court held that respondent-mother had been struggling with sobriety "for as long as these children have been alive." It noted that children needed and deserved permanency and that "we're a year to a year and a half away from knowing whether or not mom is going to be successful." The court also considered that the children's bond with respondent-mother was weak because they had been out of her care for a

“substantial period of time.” Based on the foregoing, the trial court did not err by finding that it was in the children’s best interests to termination respondent’s mother’s parental rights.

Affirmed.

/s/ Brock A. Swartzle
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly